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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **PAMELA CHYBA**

13 Plaintiff,

14 vs.

15 **BAYVIEW LOAN SERVICING, LLC,
16 AKA BAYVIEW, MARILYN CORO**

17 Defendants,

18 Case No. 14-cv-1415-BEN-BLM

19 **PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
SANCTIONS UNDER 37(D)**

20 **NO ORAL ARGUMENTS**

21 Date: July 18, 2016

22 Time: 10:30a.m.

23 Place: Courtroom 5A

24 Judge: Roger T. Benitez

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1 **TO THIS HONORABLE COURT AND DEFENDANT'S COUNSEL OF**
2 **RECORD:**

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4 **DEFENDANT'S CLAIM OF DISCOVERY ABUSE IS RIDICULOUS AS**
5 **PLAINTIFF SHOWS HOW DEFENDANT'S ARE ACTUALLY IN**
6 **VIOLATION OF THE COURT ORDER, FEDERAL RULES CIVIL**
7 **PROCEDURE, LOCAL RULES AND CHAMBER RULES**

8 Defendant's counsel did not provided proper notice of deposition as required
9 under FRCP 30(b)(1). Plaintiff is not required to be deposed after the cut-off
10 discovery date has ended on April 22, 2016 and is firmly set-out in the scheduling
11 order docket 73.

12 As the record shows, Cathy Robinson had over 6 month (180 days plus...) for
13 discovery and chose to do nothing until the last days left, then demands plaintiff
14 appear for a deposition just days before the discovery cut-off on April 22, 2016
15 providing only 6 (six) days official written notice.

16 It is not reasonable to expect plaintiff rush to accommodate defendant's
17 unreasonable and unacceptable notice of deposition with only 6 days notice from the
18 day plaintiff was officially served the noticed per Fed. R. Civ. P 30. Further, Plaintiff
19 responded shortly thereafter that the date and time is unreasonable and plaintiff
20 cannot make it do to other court date obligations and in preparation for the parties
21 hearing on the April 18th. So then Cathy Robinson demands plaintiff provide
22 additional days after the discovery cut-off is over to accommodate her. Plaintiff does
23 not owe Cathy Robinson any additional time beyond the cut-off of discovery. It is no
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1 fault of anyone other than Cathy Robinson for wasting her time to obtain a
2 deposition.
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4 It appears Bayview's Motion for Sanctions 37(d) was made as an bad faith
5 attempt to gain advantage for her client at her own negligence for waiting over 6
6 months. Only 6 days from official written notice and the second attempt providing
7 only 9 days official written notice when defendant's had 6 months (six months - 180
8 days) prior and Cathy Robinson did not comply with the rules that specifically state to
9 contact plaintiff by telephone and request to meet and confer in person. Not one time,
10 did Cathy Robinson call plaintiff or request to meet in person. Nor did Cathy
11 Robinson comply with local rule 26.1 and certify compliance of the local rules either.
12 Therefore, motion for sanctions must be denied.
13

14 At no time, did plaintiff refuse a deposition, after receiving unreasonable notice
15 for the second time, plaintiff sent an email to Cathy Robinson offering to stipulate to
16 an extension of time to allow her to depose plaintiff to provide proper notice.
17 Defendant's did not respond to offer, and instead files in bad faith for sanctions. It is
18 Cathy Robinson, who is not in compliance and should be sanctioned for not complying
19 with the court scheduling order, the local rules, FRCP 30, and chamber rules as shown
20 below.
21

22 **DEFENDANT'S COUNSEL, CATHY ROBINSON'S FAILURE TO
23 COMPLY WITH LOCAL RULE 26.1 AND DID NOT COMPLY WITH THE
24 CERTIFICATE OF COMPLIANCE REQUIREMENTS**

25 Pursuant to CivLR 26.1a clearly states: "the court will
26

1 entertain no motion pursuant to Rules 26 through 37, Fed.
 2 R. Civ. P., unless Counsel will have previously met and
 3 conferred concerning all disputed issues. If Counsel for the
 4 moving party seeks to arrange such a conference and
 5 Counsel for the party against whom the motion is made
 6 willfully refuses or fails to meet and confer, the judge (in
 7 absence of a prior order dispensing good cause with such a
 8 meeting) may order a payment of reasonable expenses,
 9 including attorney's fees, pursuant to Rule 37, Fed. R. Civ. P.
 10 and Civil Local Rule 83.1. If Counsel has offices in the same
 11 county, they are to meet in person. "Under no circumstances
 12 may the parties satisfy the meet and confer requirement by
 13 exchanging written correspondence.'"'

14 At no time, did Cathy Robinson contact Plaintiff via telephone or ask to meet
 15 and confer in person as the rules require to discuss any and all disputed issues first,
 16 before filing motions to compel or sanctions.

17 At no time, did plaintiff refuse to meet and confer, plaintiff was not asked by
 18 Cathy Robinson to meet and confer in person or a time that it would be good for
 19 both parties to speak. Cathy Robinson merely expected plaintiff to drop everything
 20 and comply with her demands. That is an unreasonable. At no time did Cathy
 21 Robinson call or leave a voice mail for plaintiff.

22 **DEFENDANT'S COUNSEL, CATHY ROBINSON'S FAILURE TO**
 23 **COMPLY WITH LOCAL RULES AND THE REQUIRED CERTIFICATE**
 24 **OF COMPLIANCE**

25 Pursuant to LR_26.1b; at the time of filing any motion with respect to Rules 26
 26 through 37, Fed. R. Civ. P., counsel for the moving party must serve and file a
 27 certificate of compliance with this rule. As shown by the record, at no time did Cathy
 28 Robinson comply or file a certificate of compliance with LR 26.1 et seq..

1 **DEFENDANT'S COUNSEL, CATHY ROBINSON'S FAILURE TO**
 2 **COMPLY WITH JUDGES ORDER DOCKET 73**

3 Per the scheduling order that specifically addresses Magistrate Major's civil
 4 discovery rules whereas:

5 Prior to bringing any discovery dispute to the Court,
 6 Counsel must meet and confer pursuant to Civil Local Rule
 7 26.1. If Counsel are in the same county, they are to meet in
 8 person;..... Under no circumstances may Counsel satisfy
 9 the "meet and confer" obligation by written correspondence.
 10 The Court expects strict compliance with the meet and
 11 confer requirement, as it is the experience of the Court that
 12 the vast majority of disputes can be resolved by means of
 13 that process. Counsel must thoroughly meet and confer and
 14 shall make every effort to resolve all disputes without the
 15 necessity of court intervention.

16 If a party is unresponsive to a request to meet and confer,
 17 after 72 hours Counsel shall contact chambers and the Court
 18 will issue an order setting a telephonic conference with the
 19 clerk assigned to the case.

20 If the parties meet and confer but fail to resolve their dispute
 21 through the meet and confer process, then Counsel for all
 22 parties are required to determine a mutually agreeable time
 23 to conduct a conference call with Chambers.....

24 And further states in the order docket 73... "All fact
 25 discovery shall be completed by all parties on or before
 26 **April 22, 2016.**"Completed" means that all discovery under
 27 Rules 30-36 of the Federal Rules of Civil Procedure,.... must
 28 be initiated a sufficient period of time in advance of the
cut-off date, so that it may be completed by the cut-off
date, taking into account the times for service, notice, and
 29 response as set forth in the Federal Rules of Civil Procedure.
 30 Counsel shall promptly and in good faith meet and confer
 31 with regard to all discovery disputes in compliance with
 32 Federal Rule of Civil Procedure 37(a)(1) and Civil Local Rule
 33 26.1(a). All discovery motions must be filed within 30 days
 34 of the service of an objection, answer or response which
 35 becomes the subject of dispute or the passage of a discovery

1 due date without response or production, and only after
2 counsel have met and conferred and have reached impasse
3 with regard to the particular issue. The Court's procedures
4 for resolving discovery disputes are set forth in Magistrate
5 Judge Barbara L. Major's Civil Chambers Rules..... "**A**
failure to comply in this regard will result in a waiver of
a party's discovery issue."

6 The record shows rather significantly that Cathy Robinson chose to ignore the
7 prior 6 months (180 days plus) to provide reasonable notice to obtain a deposition
8 from plaintiff, ignored the court order docket 73 that specifically states the discovery
9 cut-off ends on April 22, 2016, and that all discovery should be completed by that
10 time. At no time, did Cathy Robinson call plaintiff to request to meet and confer in
11 person or contact plaintiff by telephone other than by written correspondence which
12 is specifically prohibited per the local rules and court scheduling order.
13

14 **DEFENDANT'S COUNSEL, CATHY ROBINSON'S INTENTIONALLY**
15 **CHOSE TO NOT PROPERLY NOTICING PLAINTIFF OF DEPOSITION**
16 **WITH REASONABLE TIME PRIOR TO DEPOSITION AS REQUIRED**
17 **UNDER FRCP 30**

18 Plaintiff was not provided proper notice of deposition as under FRCP 30(b)(1)
19 as Cathy Robinson intentionally delayed request for deposition after having 6 month
20 prior to depose plaintiff. The additional time allowed by the order docket 95 would
21 have still allowed an additional two weeks' notice if Cathy Robinson hadn't waited and
22 waited until the last days then noticed plaintiff again only providing 9 days written
23 notice for deposition. At no time, did Plaintiff ignore or fail to show up for said
24 depositions. Plaintiff notified Cathy Robinson timely within a few days of notice of
25
26 depositions. Plaintiff notified Cathy Robinson timely within a few days of notice of
27 depositions. Plaintiff notified Cathy Robinson timely within a few days of notice of
28 depositions.

1 deposition letting counsel know the date is not reasonable or sufficient time for
2 plaintiff to attend. (see declaration). Plaintiff, prose who does not practice law in her
3 daily course of business cannot drop prior work commitments, prepare for and take
4 off a full day to accommodate counsel with only a few days notice, plaintiff
5 additionally had other court deadlines on that day, in addition to preparing for the
6 parties scheduled hearing on April 18th. See decl.

9 Any fact finder can see how 6 days and 9 days official written notice is not
10 proper or reasonable notice (plaintiff did not waived service) and intentionally done
11 when Cathy Robinson had over 180 days prior to obtain a deposition from plaintiff.

13 Further, the deposing party must give "reasonable written notice" to every
14 other party. (Fed. R. Civ. P. 30(b)(1)). While the rule doesn't specify a notice period,
15 note that Fed. R. Civ. P. 32(a)(5) prohibits the use of a deposition against a party at
16 trial when less than **14 days' notice is given**, and the deposition occurs before the
17 time a promptly filed motion for protective order can be heard.
18

20 Even though plaintiff was unable to attend or had additional time to file
21 protective order the rules states 14 days notice is given in addition to the standard and
22 common practice of 30 day notice provided by law firm who intend to deposition.
23

24 Defendants have incurred no costs or expense caused by plaintiff. Any costs
25 associated should be at the expense of Cathy Robinson. In turn Defendant's should
26 be sanctioned to pay plaintiff \$1,500 for expense to prepare and file this response.
27

CONCLUSION

Due to the foregoing and the fact Cathy Robinson did not attempt to contact plaintiff via phone and did not contact chambers within 72 hours if a party is unresponsive or make every effort to resolve all disputes without the necessity of court intervention.

Because Cathy Robinson did not attempt to call plaintiff, Cathy Robinson did not exhaust or attempt to properly meet and confer with plaintiff in person. Plaintiff moves the court for an order denying defendant's motion.

It is Cathy Robinson that has not complied with the court order docket 73, the federal rules, the local rules, or the Magistrates civil discovery rules as required. Defendant frivolous motion must be denied. Cathy Robinson has wasted the court and plaintiff's time and money to respond to this frivolous motion when Cathy Robinson not complied with the rules or orders herself.

Due to the foregoing, any dismissal of plaintiff's case is unwarranted.

Plaintiff declaration filed herewith in support. Plaintiff's right and claims filed with plaintiff's TAC incorporated herein.

Date: June 22, 2016

Respectfully Submitted,

s/Pamela Chyba
Pamela Chyba

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true and correct copy of foregoing has been served on June 22, 2016 to Defendant's Counsel of record who consented to and is a CM/ECF registered user and is deemed served under court's CM/ECF system per local rule 5.4. Defendants acting in bad faith by trying to obtain more time after discovery is over when defendant had over 6 months prior to obtain a deposition from plaintiff.

Dated: June 22, 2016

s/Pamela Chyba

Pamela Chyba